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Agenda item 6

Universal periodic review

Written statement* submitted by the Japanese Association for the Right to Freedom of Speech, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby
circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02515(E)



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Article 9 of Japanese Constitution is a treasure for Japanese people as well as for all the citizens of our planet

We, members of the Japanese Association for the Right of Freedom of Speech (JRFS) call on you to join us in the parallel event "Project Peace 9" aiming at spreading Article 9 all around the world to protect Article 9 and build peace in Japan, Asia and the world in the eve of the 70th anniversary of the Universal Declaration of Human Rights.

We call on you to press the Japanese Government to establish the rule of law by ratifying the all the optional protocols regarding the individual complaints mechanism for the human rights instruments that Japan has already ratified.

Please urge the Japanese Government to accept all the recommendations from the third Universal Periodic Review (UPR) and implement them jointly with the NGOs and citizens.

This year marks the 70th anniversary of the Universal Declaration of Human Rights. Last year, Japan, as member of the Human Rights Council for the fourth time, was subject to the 3rd UPR and received as many as 218 recommendations from 106 countries and regions, a 25% increase from the previous review.

Japan was elected member of Human Rights Council in 2016 for the 4th time and declared in January 2017 that it would ratify the individual complaints mechanism as recommended by many countries at the second UPR. However, the Abe Cabinet continues to refuse the ratification of relevant optional protocols. The ratification of all these protocols on individual complaints mechanism only takes the decision of the Cabinet, lifting Japan's reservation regarding the article 22 of Convention against Torture.

Prime Minister Shinzo Abe has failed to respond to the letter addressed to him by the HRC Special Rapporteur Joseph Cannataci concerning the right to privacy, totally ignored the International Covenant on Civil and Political Rights (ICCPR) and voted the controversial "conspiracy bill" without sufficient deliberations of the Diet.

In 2013, Abe also ignored the concerns expressed by the HRC Special Rapporteurs (Frank La Rue on the freedom of speech and expression and Anand Grover) and the UN High Commissioner Navi Pillay and railroaded the state secret bill and the bill on Japanese version of national security council. In 2015, it passed through the Diet the perilous "war laws" in violation of Article 20-1 of the ICCPR.

In 1979, when the Diet ratified the ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR), all the political parties agreed unanimously at the foreign affairs commissions of two Houses that Japan would early ratify the first optional protocol of the ICCPR. However, this agreement has not been realized until now.

The Japanese has failed to inform and/or educate the public personnel about the international human rights instruments and the HRC recommendations. Human rights instruments are not taught in law faculties as mandatory subject. In the national bar examination, no question refers to international human rights. Legal apprentices do study about human rights instruments only 2 hours. No Japanese court of justice has ever handed down a decision requiring the amendments of existing laws or any legislation to make them conform to the human rights instruments.

Planned amendment of the Constitution in violation of the ICCPR Article 20-1

Abe declared in May 2017 that he would "amend the Constitution to explicitly recognize the existence of self-defense forces by 2020". The self-defense forces are genuine armed forces whose main mission is to wage war.

Japan once was an aggressor in the second world war and it is against the article 9-2 of its Constitution to maintain armed forces.

Japan was not admitted to join the United Nations until 11 years after its founding. Now it dares to declare that it will amend the Constitution to give its self-defense forces the status of genuine armed troops. This is a violation of Articles 9 and 99 of the Constitution and a violation also of the article 20-1 of the CCPR.

The booklet published by the Japanese Foreign Ministry on the occasion of the 50th anniversary of the Universal Declaration of Human Right entitled "Universal Declaration of Human Rights and International Human Rights Covenants", in commenting the article 20-1, states that "Japan does not need to punish by law something abstract as 'war propaganda' because it renounces war by its Constitution".

In 1999, the law on national flag and national anthem passed the Diet. In 2000 a study commission on the Constitution was set up in the both Houses. In 2007, the first Abe Cabinet partially revised the Law on the Diet to establish a commission in each House to accelerate the process for amending the article 9. By revising existing national laws and unfair merit-based appointments of state personnel, Abe is preparing the ground for the revision of article 9.

Japanese Diet has never examined bills in the light of international human rights instruments.

The declaration of the Government to amend the Constitution, the article 9 in particular, without instituting a national law that is an application of the article 20-1 of the CCPR, constitutes a violation of the CCPR. It is also contrary to the articles 1-3, 55 and 56 of the United Nations' Charter that call for international cooperation for promoting the respect of human rights and basic freedoms, and the commitment of all member countries to collective and individual actions for the universal observance of human rights and fundamental freedoms.

The Human Rights Council should deprive the Japanese Government of its seat in the Council as it fails to ratify the optional protocols concerning individual complaints mechanism and continues to arrest or persecute innocent citizens who distribute flyers critical to the Government.

Right of Privacy Crisis and Lack of citizen's political right (CCPR articles 17, 19 and 25)

In 2012, the Supreme Court failed to give a relief order for Mr. Akio Horikoshi who was indicted for violation of State Personnel Law. In addition, it neglected the paragraph 26 of the concluding observation of CCPR/JPN/CO/5 and dropped the crimes committed by police officers who had conducted illegal investigation against Mr. Horikoshi. Although Mr. Horikoshi was sentenced not guilty, his violated human rights have not been entirely restored.

The 7 other people who distributed the flyers critical to the government in letter boxes of individuals and were sentenced guilty of intruding others' houses or violating the State Personnel Law remain guilty. This has a strong chilling effect on ordinary citizens. The Ministry of Internal Affairs continues to overlook the paragraph 26 of the recommendation and has fails to amend neither of the State Personnel Law and Public Office Election Law.

In post-war Japan, these two laws have contributed in seriously restricting the freedom of speech and expression in election campaigns.

In addition, under the second Abe Cabinet, human rights NGOs, leaders and members of citizens groups who oppose the construction of military bases and high-rise condos or the restart of nuclear power plants are frequently arrested and detained without warrant.

The Government of Japan has imposed a social security and tax number system nicknamed "My Number System" in violation of the CCRP article 17 and railroaded the Conspiracy law.

Mainstreaming U.N. Human Security and Disaster Mitigation and Sustainable Development Goals (SDGs)

Since the start of the second Abe Cabinet in 2012, the human rights consultation meetings that had been held twice a year, bringing together Foreign ministry officers, government representatives to UN human rights bodies, NGOs and

citizens to share information and exchange views about UN initiatives regarding human rights, have not been held. Japanese citizens and NGOs have thus lost an important opportunity to obtain information regarding UNHRC and CCRP Committee.

Japanese Government has not honored the commitment it made to implement the HRC recommendations (CCPR/C/JPN/CO/6 para 6, 7, 22, 23 and 24). In fact, after having forced the passage through the Diet of the law on national flag and anthem in 1999, the Government has imposed the hoisting of Hinomaru flag and singing of Kimigayo on teachers and children in school. Teachers and children who do not stand before the flag or who refuse to sing Kimigayo song in ceremonies are subject to punishments, including reduction of salary and other disciplinary measures. Those teachers who have been punished are denied re-hiring after the retirement age (60), depriving them of the source of income until they reach 65, the age that entitled them to pension.

The imposition of these national emblems has completed the effort to consolidate a "war-making country" where the past war and imperial system are glorified while children in Fukushima and elsewhere suffer from poverty and exposed to violence, being denied of any help from public authorities.

For instance, the Tokyo Board of Education in 2003 punished over 400 teachers who did not comply with the its order regarding Hinomaru flag and Kimigayo song.

In Osaka prefecture, the local assembly voted a "decree concerning Hinomaru and Kimigayo" in 2011 aimed at excluding from prefecture personnel those teachers opposed to the use of the flag and the song as national emblems.

In addition, since the great earthquake that hit the eastern regions of Japan in 2011, the Government has been trying to mislead the public opinion in favor of self-defense forces on the pretext of disaster relief. The education ministry, the defense ministry and local governments of 47 prefectures are collaborating to build a "war and security state system" using the joint United States of America and Japan military exercises and the military tension on the Korean Peninsula created by the new US Government.

Using the Democratic People's Republic of Korea launch of missiles, subways in large cities are stopped and municipalities have begun evacuation exercise to prepare for a hypothetical missile attack by Democratic People's Republic of Korea. Hiding the real nature of self-defense forces that are genuine armed forces, the Government is trying to build up a war-waging system using as pretext the need for disaster prevention. This is contrary to the article 20-1 of the CCPR.



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Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by International Educational Development, Inc., non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

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Continuing actions against the Hmong people in the Lao People's Democratic Republic*

International Educational Development, Inc. and the Association of Humanitarian Lawyers have been concerned for some time about the dire situation of the Hmong people in the Lao People's Democratic Republic (hereinafter Laos). To that end, we have submitted a number of written statements and urgent action appeals, including to the Special Advisor to the Secretary-General on the Prevention of Genocide and Mass Atrocities. The situation invokes the "Responsibility to Protect (R2P) principles -- the Hmong people are at risk of extermination. Given both the history of the Hmong people and their more than 40-year-long grave situation, they have the right to self-determination as the only way to realize their basic human rights.

The Hmong people, especially those now in the Phou Bia area, continue to face constant military actions against them as they are still considered enemies of the State. As a consequence they are forced to relocate and hide on a continual basis. Food and medicine are in short supply as the Laotian authorities have continued to block these items. Because of the constant moving there are no stable places of residence and even temporary structures are destroyed by the Lao forces. Agriculture is difficult if not impossible, compounding the serious food shortages due to the blockades and to the fact that when the Lao forces find fruit trees or crops they destroy them. This is a crime against humanity as set out in Article 7 (1)(b) and (2)(b) of the Rome Statute that identify creating conditions of life that are extremely difficult and the denial of food and medicine as elements of the crime of extermination.¹ This supports our view that the Laotian authorities are hoping to essentially eliminate the Hmong people before there is any international action.

In exercising the right of reply following our statements at earlier sessions of the Council, the Laotian representative stated that under Laotian law, all groups enjoy the same basic rights, and all live in harmony. While that may be true for other ethnic groups in the country, it is definitely not true for the Hmong people—as we have shown in our submissions, they have been subjected to genocidal conditions since the end of the Vietnam War. At present their numbers are catastrophically reduced.

As an interim measure before the Hmong people are granted their right to self-determination, we believe it is imperative for the international community to act forthwith and establish a special protected area guarded by international actors in the Hmong traditional area. This type of "safe haven" would allow the surviving Hmong people to congregate, to receive humanitarian aid and to communicate with the outside world unfettered by the Laotian authorities. The safe haven should be located near an international border to facilitate entrance and egress of interested parties such as humanitarian aid workers, the media and, of course, relatives. Failure to establish such an area is likely to encourage the Laotian authorities to continue their hostile actions against the surviving Hmong.

As we indicated in our oral statement in September 2016, the United States government pledged money to help clean up the unexploded ordnance left over from the Vietnam War. A United States representative visited in December 2016, but was not allowed into the Hmong area – where much of the unexploded ordnance is located. With a new American president as of January 2017 we are uncertain if any additional action will be taken on this issue and we fear the Laotian authorities will use the unexploded ordnance project to the detriment of the Hmong peoples. The international community should also address this situation.

Conclusions and recommendations

It is patently clear that the Laotian authorities have no intention adequately to address the situation of the Hmong people. It is also clear that action by United Nations bodies to date continues to be grossly inadequate to address their genocidal situation. Laos has to date not allowed on-site investigations. While the treaty bodies have addressed the situation, they can only issue early warnings and urgent actions and we hope that the Council, the General Assembly or

¹ The Lao People's Democratic Republic has not ratified the Rome Statute or Regulations, but we refer to its provisions to underscore the gravity of the offenses by the authorities against the Hmong people.

the Security Council take affirmative action, which to date has not occurred. The UPR process served to illustrate or identify violations, even serious ones, but it alone is not an action procedure. The International Committee of the Red Cross can undertake relief efforts, but in this case are restrained from doing so by the relevant authorities.

As a result of the urgency of this situation, we recommend that the following actions be undertaken:

1. The High Commissioner should undertake to establish a safe haven for the Hmong people as soon as possible. Alternatively, the High Commissioner could request the Secretary-General to act in this regard. The Council should support such action.
2. The international community should invoke the Responsibility to Protect (R2P) mechanisms as soon as possible due to the genocidal situation and should recognize the right to self-determination of the Hmong people.
3. The Secretary-General should consider other action on this situation such as encouraging or instigating independent investigation, including the issue of unexploded ordnance in the Hmong areas.
4. The relevant mandate holders of the Council, including those addressing summary execution, disappearances, torture, internally displaced persons, health, food, water and sanitation, arbitrary detention, human rights defenders, truth, and minority issues should request on site visits to the Hmong areas in Laos, either alone or in concert.
5. Given that nearly all special procedures are highly relevant to the situation in the Hmong areas of Laos, the Council should consider requesting the High Commissioner to undertake action, including establishing a commission of inquiry as has been established in other situations. In the alternative, the Council should establish its own commission of inquiry or appoint a special rapporteur or independent expert.

*Association of Humanitarian Lawyers, NGO without consultative status, also shares the views expressed in this statement.